

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS

SUPERIOR COURT

99-E-0410

IN THE MATTER OF THE LIQUIDATION OF  
TUFTS HEALTH PLAN OF NEW ENGLAND, INC.

**LIQUIDATOR'S MOTION TO APPROVE INTERIM DISTRIBUTION  
ON THP ALLOWED CLAIMS**

Roger A. Sevigny, Commissioner of Insurance of the State of New Hampshire, in his capacity as the duly appointed Successor Liquidator of Tufts Health Plan of New England, Inc. ("TNE" and the "Liquidator," respectively), moves for authority to pay an interim distribution in the amount of \$1,000,000 to the holders of certain Allowed Claims<sup>1</sup> described more fully below. In support of his motion, the Liquidator states as follows:

1. On December 20, 2000, this court entered an order approving a Funding and Settlement Agreement among the Liquidator and Tufts Associated Health Plans, Inc., Tufts Associated Health Maintenance Organization, Inc. ("TAHMO"), TAHMO Holdings, Inc., Tufts Benefit Administrators, Inc. and Total Health Plan, Inc. (collectively "THP" or the "THP Affiliates" and the "Funding and Settlement Agreement"), which incorporated the Liquidator's Plan of Liquidation (the "Plan"). The Plan approved the allowance of certain claims held by THP (the THP Allowed Claims"), consisting at that time of \$4,183,358 (plus an additional amount accruing from June 30, 2000 through the Conclusion of Services) in Class 1, and \$6,440,972 in Class 5. Under the Plan, payment of the THP Allowed Claims was subordinated

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<sup>1</sup>All capitalized terms are intended to have the same meaning as defined in the Plan of Liquidation and the Funding and Settlement Agreement, unless specifically otherwise defined. None of the summaries or characterizations of the terms of the Plan or the Funding and Settlement Agreement contained in this motion are intended to modify any provision of the Plan or the Funding and Settlement Agreement as approved by this court.

to the payment of all other claims in Classes One through Five. See Plan Section 1.21; Funding and Settlement Agreement Section 1.19.

2. In addition, in an integral feature of the Plan and the Funding and Settlement Agreement, THP unconditionally guaranteed payment of all Allowed Claims in Classes One through Five (the "THP Guaranty").

3. The Liquidator completed the process of administering all of the claims filed against TNE in Classes 1 through 5. With the exception of the THP Allowed Claim, all other allowed claims in Classes 1 through 5 have been paid in full. The source of funding for payment of these claims were general funds of this estate, and proceeds of certain special deposits (the "Special Deposits") held by the Ancillary Receiver appointed in a certain Ancillary Proceeding pending against TNE in the Superior Court of Providence in Plantations, Rhode Island (the "Ancillary Receiver" and the "Ancillary Proceeding", respectively).

4. As set forth more fully in the Liquidator's Motion to Compel Transfer of Rhode Island Special Deposits Pursuant to Plan of Liquidation (the "Special Deposits Motion"), the Liquidator was unable to consensually arrange for the payment to this estate of the remaining proceeds of the Special Deposits, due to concerns expressed by the Ancillary Receiver over the effect of *Ruthardt v. U.S.*, 303 F.3<sup>rd</sup> 376(1<sup>st</sup> Cir. 2002), *cert. denied sub nom Bowler v U.S.*, 538 U.S. 1031 (2003).

5. Pursuant to a Stipulation among the Liquidator, the Ancillary Receiver and THP filed in connection with the Special Deposits Motion, the Liquidator, TAHMO and the Ancillary Receiver agreed to attempt to resolve the *Ruthardt* concerns by alternative means. The Ancillary Receiver also consented to an interim distribution to THP in respect of the THP Allowed Claims in the amount of \$1,000,000.

6. The Liquidator holds cash and cash equivalents of \$1,301,304 as of September 30, 2004. In addition, the balance of the Special Deposit proceeds held by the Ancillary Receiver is \$313, 781.80 as of October 11, 2004. The Liquidator proposes to make the interim distribution solely from general estate assets, and not from the Special Deposit proceeds. After the requested interim distribution, the Liquidator will still hold over \$300,000, and the Ancillary Receiver's Special Deposit proceeds will remain intact, subject to resolution of the *Ruthardt* issues and until further order of this Court.

7. Neither the Liquidator nor THP is aware of any Claim against TNE's estate senior in rank or payment priority to the subordinated THP Allowed Claims that has not been paid in full in the amount allowed by the court. This includes, without limitation, any claim of the United States of America or any subdivision thereof that, under the *Ruthardt* decision, might yet be asserted against TNE by the filing of a proof of claim. None of the Liquidator's inquiries directed to the Civil Division of the United States Department of Justice revealed any claim of which the Department of Justice is aware. Under NH RSA 402-C:44, if such a claim existed, it would be asserted as a Class 3 Claim under the Plan, subject to any and all defenses which TNE or any other party in interest could raise, and payable (if and to the extent allowed) from the proceeds of TNE's remaining estate. To the extent necessary, the THP Guaranty will remain available to satisfy any Allowed Claim in Classes One Through Five that may arise prior to the closing of this estate and the discharge of the Liquidator.

8. The Liquidator believes it is in the best interest of this estate and its remaining creditors that the court authorize the requested interim distribution to THP. In making this request, the Liquidator relies upon the continuing THP Guaranty, as reaffirmed by THP. A copy

of THP's reaffirmation of the THP Guaranty is attached hereto and incorporated herein as Exhibit A.

WHEREFORE, the Liquidator requests the interim order authorizing him to pay an interim distribution to TAHMO in the amount of \$1,000,000 on the THP Allowed Claims, and granting the Liquidator such other and further relief as is just.

Dated: November 5, 2004

Respectfully submitted,

ROGER A. SEVIGNY, COMMISSIONER OF  
INSURANCE OF THE STATE OF NEW  
HAMPSHIRE, AS SUCCESSOR LIQUIDATOR  
OF TUFTS HEALTH PLAN OF NEW  
ENGLAND, INC.

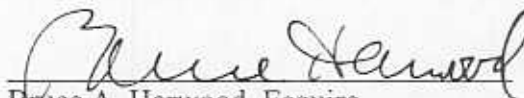
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(603) 627-8139

CERTIFICATE OF SERVICE

I hereby certify that on this 5<sup>th</sup> day of November, 2004, a copy of the Liquidator's Motion to Approve Interim Distribution on THP Allowed Claims was served upon the parties on the attached service list, via first class mail, postage prepaid.


  
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Bruce A. Harwood

EXHIBIT A

## THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS

SUPERIOR COURT

99-E-0410

IN THE MATTER OF THE LIQUIDATION OF  
TUFTS HEALTH PLAN OF NEW ENGLAND, INC.REAFFIRMATION OF THP GUARANTY

Tufts Associated Health Plans, Inc., Tufts Associated Health Maintenance Organization, Inc. ("TAHMO"), TAHMO Holdings, Inc., Tufts Benefit Administrators, Inc. and Total Health Plan, Inc. (collectively "THP" or the "THP Affiliates"), jointly and severally, in order to induce Roger A. Sevigny, in his capacity as the duly appointed Successor Liquidator of Tufts Health Plan of New England, Inc. (the "Liquidator" and "TNE," respectively) to pay an interim distribution in connection with the Plan of Liquidation and the Funding and Settlement Agreement approved in the proceeding entitled In the Matter of the Liquidation of Tufts Health Plan of New England, Inc. (99-E-0410) (the "Liquidation Proceeding") hereby represent and warrant as follows:

1. The "THP Guaranty" referred to in paragraph 2.2 of the Funding and Settlement Agreement dated as of November 14, 2000 approved by the Court in the Liquidation Proceeding remains in full force and effect, and is not subject to any defense, counterclaim, setoff, recoupment, or any other claim or matter of any nature whatsoever, in law or in equity, that would alter, affect, or diminish the continuing validity of the THP Guaranty or any of the obligations of the THP Affiliates thereunder.

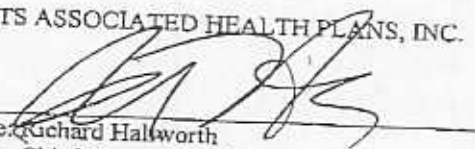
2. Each of the THP Affiliates hereby reaffirm their obligations under the THP Guaranty.

3. As of the date hereof, none of the THP Affiliates is aware of any claim against TNE or the Liquidator held by the United States of America or any agency or subdivision thereof, including without limitation the Internal Revenue Service.

IN WITNESS WHEREOF, we have each set our hands and seals as of the 4<sup>th</sup> day of November, 2004.

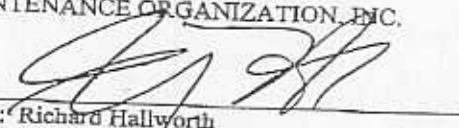
  
Witness

TUFTS ASSOCIATED HEALTH PLANS, INC.

By:   
Name: Richard Hallworth  
Title: Chief Operating Officer

  
Witness

TUFTS ASSOCIATED HEALTH  
MAINTENANCE ORGANIZATION, INC.

By:   
Name: Richard Hallworth  
Title: Chief Operating Officer

  
Witness

TAHMO HOLDINGS, INC.

By:   
Name: Richard Hallworth  
Title: Chief Operating Officer

  
Witness

TUFTS BENEFIT ADMINISTRATORS, INC.

By:   
Name: Richard Hallworth  
Title: Chief Operating Officer

  
Witness

TOTAL HEALTH PLAN INC

By:   
Name: Richard Hallworth  
Title: Chief Operating Officer



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THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS

SUPERIOR COURT

99-E-0410

IN THE MATTER OF THE REHABILITATION OF  
TUFTS HEALTH PLAN OF NEW ENGLAND, INC.

**ORDER APPROVING LIQUIDATOR'S MOTION FOR  
APPROVAL OF INTERIM DISTRIBUTION ON THP ALLOWED CLAIMS**

This cause coming on to be heard on the Motion of Roger A. Sevigny, Commissioner of Insurance of the State of New Hampshire, in his capacity as duly appointed Liquidator (the "Liquidator") of Tufts Health Plan of New England, Inc. entitled "Liquidator's Motion to Approve Interim Distribution on THP Allowed Claims" (the "Motion"); due written notice of the Motion having been provided to all counsel of record; no parties in interest having filed objections to the Motion; and the court having considered the Motion and being otherwise advised in the premises;

IT IS HEREBY ORDERED that the Motion is granted, and the Liquidator is hereby authorized to pay the Interim Distribution on the THP Allowed Claims as requested in the Motion, effective immediately.

SO ORDERED.

Dated: November \_\_, 2004

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Presiding Judge